

Internal Revenue Service

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9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B4

PLR-137929-15

Date:

March 2, 2016

Re:

Legend

Decedent =
Spouse =
Son =
Trust =

Company =
Trustee 1 =
Trustee 2 =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
X =
Y =

Dear :

This letter responds to a letter dated November 17, 2015, and subsequent correspondence, from your authorized representative requesting an extension of time under § 301.9100 and § 301.9100-3 of the Procedure and Administration Regulations to sever a trust into an exempt trust and a non-exempt for generation-skipping transfer (GST) tax purposes, to make a “reverse” qualified terminable interest property (QTIP) election under § 2652(a)(3) of the Internal Revenue Code with respect to the exempt

trust, and to apply the automatic allocation rules to allocate Decedent's GST exemption to the exempt trust.

The facts and representations submitted are summarized as follows. On Date 1, Decedent created a revocable trust, Trust. Trust was completely restated on Date 2. Decedent died testate on Date 3, survived by Spouse.

Article IV(1)(a) of Trust directs the trustee, after the Decedent's death, to set aside out of the trust estate as a separate trust, to be known as "Trust B," a pecuniary amount equal to Decedent's federal generation-skipping tax exemption which remained unallocated immediately before Decedent's death, less the value for generation-skipping tax purposes of all direct skips occurring by reason of Decedent's death. The balance of the trust estate is to be allocated to a separate trust, to be designated as "Trust A," if Spouse survives Decedent or as "Trust C" if Spouse does not survive Decedent.

Article IV(2)(a) provides, in part, that the trustee of Trust A and Trust B shall pay the income of Trust A and Trust B to Spouse in convenient installments at least as often as quarter-annually during her life. Article IV(2)(b) provides, in part, that the trustee may also make discretionary distributions of so much or all of the principal of Trust A and Trust B to Spouse during her life for Spouse's support, medical care, welfare, and best interest. Article IV(3) provides, in part, that upon Spouse's death, the trustee shall distribute any accrued or undistributed income on Trust A and Trust B to Spouse's estate. In addition, Article IV(3) describes a portion of Trust A that the trustee is to allocate to Trust B, with the balance of Trust A to be allocated to Trust C. Thereafter the trustee shall hold Trust B as a single trust for the benefit of Son and his descendants.

Upon Decedent's death, Trustee 1 became the successor trustee of Trust and served as executor of Decedent's estate. Trustee 1 acted as his own legal counsel during the time that he served as executor of Decedent's estate and as successor trustee of Trust. On Date 4, Trustee 1 prepared and timely filed Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, and reported Trust on Part 4 of the return. Trustee 1 also reported Trust as QTIP property on Schedule M of the Form 706 and, therefore, is deemed to have made the QTIP election to have Trust treated as qualified terminable interest property under § 2056(b)(7). Trustee 1 failed to sever Trust into Trust A and Trust B and, correspondingly, failed to identify Trust A and Trust B as separate trusts and did not make a "reverse" QTIP election under § 2652 with respect to Trust B. Trustee 1 also failed to attach Schedule R to the Form 706 and, as a result, Decedent's GST exemption was not allocated to either Trust A or Trust B.

On Date 5, Trustee 1 died. On Date 6, Trustee 2 became the successor trustee of Trust. Upon review of the Trust records Trustee 2 discovered the failure of Trustee 1

to make a reverse QTIP election with respect to Trust B and to allocate Decedent's GST exemption to Trust B. Pursuant to the terms of Trust, Trustee 2 will sever and fund Trust A and Trust B. Trustee 2 will fund Trust B by allocating to Trust B an amount equal to a fraction of the current net fair market value of Trust's assets, the numerator of which is X, Decedent's unused GST tax exemption remaining on the date of his death, and the denominator of which is Y, the total value of Trust's assets as of Decedent's date of death.

Law and Analysis

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate shall, except as limited by § 2056(b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of § 2056(a), such property shall be treated as passing to the surviving spouse, and for purposes of § 2056(b)(1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

Section 2601 imposes a tax on every generation-skipping transfer (within the meaning of subchapter B) made by a "transferor" to a skip person. Under § 2611(a), the term "generation-skipping transfer" means a taxable distribution, a taxable termination, and a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate.

Section 2641(a) defines the term "applicable rate" with respect to any generation-skipping transfer, as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2631(a), as in effect for the year at issue, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2632(e)(1) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated as follows: (A) first, to property which is the subject of a direct skip occurring at such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

Section 26.2632-1(d)(2) of the Generation-Skipping Transfer Tax Regulations provides, in part, that a decedent's unused GST exemption is automatically allocated on the due date for filing Form 706 to the extent not otherwise allocated by the decedent's executor on or before that date. Unused GST exemption is allocated pro rata, on the basis of the value of the property as finally determined for purposes of chapter 11, first to direct skips treated as occurring at the transferor's death. The balance, if any, of unused GST exemption is allocated pro rata on the basis of the chapter 11 value of the nonexempt portion of the trust property to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made.

Section 2652(a)(1) provides, in part, that for purposes of chapter 13, the term "transferor" means in the case of any property subject to the tax imposed by chapter 11, the decedent. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Section 2652(a)(3) provides, in part, that in the case of any trust with respect to which a deduction is allowed to the decedent under § 2056 by reason of subsection (b)(7), the estate of the decedent may elect to treat all of the property in such trust for GST tax purposes as if the election to be treated as qualified terminable interest property had not been made (reverse QTIP election).

Section 26.2652-2(a) provides, in part, that a reverse QTIP election is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies. Section 26.2652-2(b) provides that an election under § 2652(a)(3) is made on the return on which the QTIP election is made.

Section 26.2654-1(b)(1) provides, in part, that the severance of a trust that is included in the transferor's gross estate (or created under the transferor's will) into two or more trusts is recognized for purposes of chapter 13 if the trust is severed pursuant to a direction in the governing instrument providing that the trust is to be divided upon the death of the transferor and the terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original

instrument and the severance occurs prior to the date prescribed for filing the Federal estate tax return (including extensions actually granted) for the estate of the transferor and either the new trusts are severed on a fractional basis.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute).

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore an extension of time is granted until 120 days from the date of this letter to sever Trust into an exempt trust and a non-exempt trust, and to make a reverse QTIP election with respect to the exempt trust. Finally, we rule that the automatic allocation rules of § 2632(e)(1) apply to automatically allocate Decedent's unused GST exemption to the exempt trust.

The reverse QTIP election should be made on a supplemental Form 706. The supplemental Form 706 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service Center – Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709. A copy of this letter is enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: Lorraine E. Gardner
Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: